

SENATE BILL 323 – BILL TO LIMIT THE DURATION OF COPA
HEARING AT THE SENATE JUDICIARY COMMITTEE
FEBRUARY 5, 2007

Exhibit No. 3
Date 2-5-07
Bill No. SB 323

Materials in Support of Testimony
By John H. Goodnow, CEO, Benefis Healthcare System

Why Eliminate COPA?

1. The premise (lack of competition, monopoly) for COPA is gone.
2. COPA limits the not-for-profit, community asset hospital's (Benefis Hospital) ability to compete.
3. COPA adds extra healthcare costs in Great Falls (regulatory \$250,000 and could add \$630,000 to bond interest costs annually).
4. It is unfair to Great Falls for Benefis to continue under COPA when no other community in Montana is so regulated (including those with only one hospital).
 - A more detailed explanation is shown under Attachment #1.

Addressing Erroneous Allegations From Our Competition

Benefis will not institute economic credentialing, as alleged by the Great Falls Clinic, and pledges to continue to control costs.

- Please see letter from the Benefis Board in Attachment #2.
- Letter regarding services also in Attachment #2.

Support Letters

- Please see Attachment #3 for example support letters. Examples attached:
 - Northcentral Montana Physicians IPA (a Great Falls IPA of 80 physicians) (12-05-06)
 - Dave Henry, CFO of Northern Montana Healthcare, Havre (12-06-06)
 - New West Health Services, Helena (12-11-06)
 - Carl J. Christensen, CEO, Pondera Medical Center, Conrad (12-11-06)
 - The Northcentral Montana Healthcare Alliance (14 hospitals) Board (12-11-06)
 - McLaughlin Research Institute Board (12-14-06)
 - The Great Falls Area Chamber of Commerce (12-20-06)
 - James Shepard, Billings (12-21-06)
 - Very Reverend Jay H. Peterson, Great Falls-Billings Diocese (01-10-07)
 - Sister Maryann Benoit, S.P. (01-11-07)
 - Chief Earl Old Person, Blackfeet Tribal Business Council (1-26-07)

Article From Modern Healthcare (Attachment #4)

- Shows only three COPAs left in the U.S. and terms them "Regulatory Dinosaurs".

Please support this Bill and please release Benefis from the now unnecessary and, at this point, detrimental COPA. Thank you.

ATTACHMENT #1

**IT IS TIME TO ELIMINATE COPA REGULATIONS THAT IMPEDE BENEFIS' ABILITY
TO COMPETE AND THAT RAISE HEALTH CARE COSTS IN GREAT FALLS**

I. What Was COPA's Primary Purpose?

- Regulation, **absent competition** (at the time of the merger in 1996)

II. What Has Changed On The Competition Landscape in the Past Ten Years?

- 1998 Great Falls Clinic (51% ownership) and Blue Cross (49% ownership) establish a joint venture insurance product, **Montana Care**, that is the second largest single insurance product in Benefis' service area (second only to Blue Cross/Blue Shield of Montana). In fiscal year 2005, Montana Care represented 12.4% of all commercial insurance business at Benefis. Montana Care utilizes a restrictive provider panel, which they have used to effectively exclude Benefis and more than half of the independent physician community from any services that Great Falls Clinic offers competitively in Great Falls.¹ These exclusions are based on economic factors rather than quality of care issues. As a result of the exclusions, patients are "steered" away from Benefis and the independent physician community, and towards Great Falls Clinic and members of their provider panel. Montana Care's steerage began almost immediately. This is a very powerful form of competition, which did not exist in 1996.
- 1999 Two competing outpatient surgery centers enter market:
- **Great Falls Clinic Surgery Center** (owned 51% by Great Falls Clinic and 49% by Benefis at that time)
 - **Central Montana Surgery Center** (owned by Harold Poulsen)
- 2002 Twenty inpatient beds begin competing with Benefis for inpatient business at the **Central Montana Surgical Hospital** (owned by Harold Poulsen at that time)
- 2005 The **Great Falls Clinic** opens a new, 108,000 sq. ft. **specialty clinic** building to further compete with Benefis. Services there which directly compete with services offered at Benefis include:
- Laboratory
 - PT/OT
 - Radiology including MRI, CT Scan, Ultrasound, and Nuclear Medicine.
 - Non-Invasive Cardiology including Echocardiography, Nuclear Studies, Stress Procedures, Holter monitoring, and Vascular Studies,
 - Gastroenterology
 - Other Ancillaries
- Included in the new specialty building is a **Cancer Center**, which directly competes with Benefis (including Radiation Oncology for which Benefis previously did not have local competition)
- 2005 Great Falls Clinic buys Benefis' 49% share in Great Falls Surgery Center and then reportedly sells 1/3 of the Surgery Center to **Essentia Health**, a large Minnesota-based

¹ With only a few exceptions for those specialty areas not represented in the Great Falls Clinic (i.e., neurosurgery), Great Falls Clinic providers are the only preferred providers in the greater Great Falls area.

national health/hospital system and another significant source of competition. This sale of Benefis' interest enables and sets the stage for increased competitive efforts for outpatient surgeries and procedures which directly compete with Benefis, including:

- Endoscopic Gastroenterology procedures
- Orthopedic surgeries, including arthroscopic procedures
- Pain Management procedures
- Laparoscopic surgeries and procedures, such as cholecystectomy
- Podiatric surgeries
- Ophthalmologic surgeries
- Urologic procedures such as prostate biopsy, cystoscopy, etc.
- General surgeries and procedures, such as hernia repair, breast biopsy, etc.
- ENT procedures, including tonsillectomy, myringotomy, etc.
- Gynecologic procedures

2005 Benefis makes a final decision to disaffiliate from Providence Services in the fall. The parties work diligently to finalize an agreement that was subject to the approval of the Catholic Church in Rome and the Attorney General of the State of Montana. The disaffiliation was completed on 9-30-06. At this point Benefis is completely a community asset with no outside ownership interests.

2006 Great Falls Clinic and its out-of-state partner Essentia Health announce their plans to jointly operate Central Montana Hospital as a **for-profit, inpatient/outpatient competitor** to Benefis. Essentia, which purchased 1/3 interest in the Great Falls Surgery Center, is now a 50% joint owner in the venture to operate Central Montana Hospital. The new venture is very clear that it intends to compete with Benefis on an escalating basis, and a rapid ramp-up to a high level of occupancy is expected at Central Montana Hospital. As Daniel Zismer of Essentia testified in district court at oral argument:

“Our intention was to come to this community, partner with the Great Falls Clinic, create a new integrated system of health care, potentially bring new services to this community, provide the physicians a venue to practice certain services that they cannot at this point at Benefis, and grow this over time, and to offer choice to the community based on our ability to provide an attractive high-quality platform of integrated health care.”

This transaction was initially challenged via litigation by Benefis. Benefis dropped its lawsuit on 11-06-06. This new competition from the Great Falls Clinic and its out-of-state partner Essentia, coupled with the previous competition outlined above, constitutes substantial competitive pressure on Benefis that did not exist at the time of the merger.

III. Therefore, The Founding Principle (Lack Of Competition) For COPA No Longer Exists

IV. What Was Public Perception Of The Need To Continue COPA?

- See the position taken by the Tribune Editorial Board on page 3.
- Opposition to removal of COPA came from the Great Falls Clinic and from one of their major partners, Blue Cross. Opposition from competitors is not surprising, since it is in their best interest for Benefis to be regulated which hampers our ability to compete.



You can make online comments — about opinions, today's question from Page 1M, sports and news issues — all on *The Buzz*, the Great Falls Tribune's online Forums. Check them out at: <http://GreatFallsTribune.com/forums>

OPINION

Editorial board

Jim Strauss, President & Publisher
Elaine Kullhanek, Executive Editor
Gary Moseman, Managing Editor
Mike Gale, Production Director

Health care has changed; COPA should sunset

A decade is a long time. The past 10 years have seen explosive growth in the Internet and computer use, hybrid cars, wind energy, high-definition TV, satellite radio, and, in parts of Montana, population. Nowhere has the pace of growth and change been greater than in health care — in technology and in the evolution of the system itself.

It was 10 years ago that Great Falls' two long-time hospitals merged, resulting in Benefis Healthcare and a state document that sought to protect consumers from monopolistic exploitation — the "Certificate of Public Advantage," or COPA.

By just about any measure, the merger has been a success, including both quality and cost of care. To what extent the COPA played a role in that success is unknowable, but at the very least the regulatory process accompanying the COPA served as a consumer safety net that helped Benefis gain public acceptance.

After 10 years, however, northcentral Montana's

community hospital finds itself tangled in that safety net, burdened with reports that hardly anybody reads and encumbered by processes that divert resources from the hospital's primary mission.

Despite the merger of the area's two major hospitals, Benefis today faces stiff competition, not only from next door but also from around the region.

The COPA has served its purpose and should be allowed to sunset.

Many reasons could be listed, but three rise above the rest in our minds:

■ As noted above, the merger succeeded. Benefis is working to meet the community's needs in an already heavily regulated health-care environment. The hospital is guided by a strong public-interest mission statement and an unpaid board of directors from a wide cross-section of the community.

■ The COPA today comes with costs, in real time and expense and in opportunities lost to the sometimes-cumbersome process. It's important to note that those expenses

are borne by Benefis and, therefore, the community — not by the state.

■ It's a matter of fairness. As Dr. Paul Dolan, a board member, points out, it is "unfair that Benefis becomes the only regulated major hospital in the state. If it's good for us, it ought to be good for everybody else."

Below, we'll look a little more closely at those three reasons.

Success of the merger

The combination of Columbus Hospital and the Deaconess Medical Center has resulted in Montana's largest — and lowest-cost — medical operation.

A recent cost survey indicated that overall cost of services at Benefis was 18 percent lower than at similar facilities elsewhere in Montana.

At the same time, quality has shown significant improvement.

In just the past couple of months, Modern Healthcare magazine published

industry analyst Solution's list of 100 most improved hospitals, and Benefis was on the list — the only Montana hospital to make it.

In February, a nationwide study by HealthGrades put Benefis in the top five percent of hospitals nationally, including the 2006 Distinguished Hospital Award for Clinical Excellence.

Taken together with the hospital's cost of services, you get a picture of a good health-care deal for northcentral Montanans — and for any others who'd care to come here.

OUR OPINION

The COPA is a drain on the hospital's resources.

The reporting and auditing responsibilities it imposes in the course of regulation are increasingly unnecessary and in many cases redundant.

The hospital's users bear not only the direct costs of this regulation, but also the consequences of hospital resources allocated for

things not directly related to patient care.

Dissolution of the COPA would not leave Benefis unregulated — far from it.

In addition to oversight by major organizations such as the Joint Commission on Hospital Accreditation (from which Benefis got rave reviews this year) and the Centers for Medicare and Medicaid Services, Benefis and its operation are subject to review by agencies and organizations related to those operations.

This includes medical specialty standards to labor laws, the IRS (for tax-exempt status) to the DEA (for handling and distribution of controlled substances in the pharmacy).

These other major operations, looking for growth opportunities and assisted by technological advances, are pressing into the traditional Benefis service area.

Benefis Healthcare is a major economic force in northcentral Montana, but more important, it's our community hospital. As Benefis goes, so goes our community.

The public's interest lies in a strong Benefis that is able to move quickly to meet competitive challenges.

It can best do so without the COPA.

Fairness

This point can't be stressed enough, and may be the most relevant to the question of whether to sunset the COPA.

The question is cast in many people's minds as a matter of competition between the hospital and the Great Falls Clinic.

To see how the competi-

tive environment has changed since 1996, look no further than the clinic's new specialty building, including Clinic Cancer Care, and the clinic's joint venture with Minnesota-based Essentia Health in what's now called Central Montana Hospital.

But beyond that, Benefis and the clinic face increasingly aggressive competition from health-care operations from other cities — whether it's cardiologists from Missoula and Kalspell or other diagnosticians from Billings.

These other major operations, looking for growth opportunities and assisted by technological advances, are pressing into the traditional Benefis service area.

Benefis Healthcare is a major economic force in northcentral Montana, but more important, it's our community hospital. As Benefis goes, so goes our community.

The public's interest lies in a strong Benefis that is able to move quickly to meet competitive challenges.

It can best do so without the COPA.

V. What Areas Does COPA Oversee?

<u>Area</u>	<u>How</u>
Charges/Prices and Cost Savings	Revenue Cap
Quality	Quarterly quality reporting from Benefis, and Benefis required to maintain JCAHO Accreditation.
Access	Attorney General approval required prior to Benefis elimination of any service which existed at the time of the merger.
Satisfaction	
- Patient	Benefis measures on an on-going basis
- Employee	Benefis measures every other year
- Physician	Benefis measures every other year

VI. And How Has Benefis Done On The Areas COPA Oversaw?

<u>Area</u>	<u>Benefis Performance</u>
Charges/Prices/Cost Savings	Benefis charges are less than other similar hospitals in Montana currently and competition will hold them down going forward. Required cost savings were exceeded.
Quality	<p>Some of our major recognitions just over the past two years include:</p> <p><u>2005</u></p> <ul style="list-style-type: none">▪ HealthGrades' 2005 Distinguished Hospital Award for Clinical Excellence™ (Top 5% in the Nation for quality)▪ 5-Star Community Value Index Rating in Cleverley & Associates' <i>State of the Hospital Industry</i>▪ Solucients's 100 Top Hospitals: Performance Improvement Leaders Award 2004 (Top 2% in the Nation for performance improvement)▪ Health and Human Services Medal of Honor Award for Organ Donation▪ Mountain-Pacific Quality Health Foundation's 2005 Quality Achievement Award <p><u>2006</u></p> <ul style="list-style-type: none">▪ JCAHO Accreditation (great results)▪ JCAHO recognition of Benefis Joint Replacement Program and our Stroke Program

- **HealthGrades 2006 Distinguished Hospital Award for Clinical Excellence (Top 5% in the Nation for quality)**
- **Solucient's 100 Top Hospitals: Performance Improvement Leaders Award 2005 (Top 2% in the Nation for performance improvement)**
- **Cleverly and Associates Community Value 5-Start Award for 2006**
- **Montana Pacific Quality Health Foundation Quality Achievement Award**
- **Specialty excellence awards and recognitions in Orthopedic Care, Pulmonary Care, Gastrointestinal Services, and Bariatric Surgery**

Access

Benefis has consistently added new services over the years. Only one service (Convenience Care) was eliminated over the years, with the Attorney General's approval. While eliminated from Benefis, it was not eliminated from the Community as it was taken over by physicians.

Satisfaction

- Patient

-Up in 2003 over 2002
 -Up in 2004 over 2003
 -Up in 2005 over 2004
 - Year to date in 2006 89.3% of Benefis patients rate their service as either good or very good (4's and 5's as on a 5- point scale)

- Employee

- The survey completed in 2004 showed a 43% improvement over 2002. The survey we have just completed showed additional improvement and Benefis employees rated Benefis 3.94 on a 5-point scale.

- Physician

- Last survey, completed in 2004, showed a 52% improvement over 2002. Next survey will be done by year-end or shortly thereafter.

VII. Does COPA Regulation Increase Health Care Costs In Great Falls?

■ **Yes. In two ways:**

- Through the costs of reporting and regulatory consultants (approximately \$250,000/year).
- Through increased borrowing costs (Benefis interest costs will be higher because we are so heavily regulated). Benefis needs to go to the bond market in 2007 for major financing to complete the new Patient Tower. COPA, along with the increased competition from the clinic, will increase our borrowing costs, and Great Falls medical costs, by approximately \$630,000 per year.

■ **Therefore, the above amounts together total \$880,000/year.**

VIII. What Was The Recently Completed 10-Year Review Process?

- 03-20-06 – 10-year review request from Attorney General
- 04-20-06 – response from Benefis
- 05-5-06 – additional questions from the Attorney General
- 05-31-06 – response from Benefis
- 06-27-06 – public hearing
- 10-16-06 – opinion rendered by Attorney General

IX. Reaction To The Attorney General's 10-16-06 Ruling

- See the Great Falls Tribune Opinion on page 7.

X. So Why Should Benefis Be More Regulated Than Every Other Hospital In Montana (Most Of Which Are Also The Only Hospital In Their Community? (Montana Only Has Two 2-Hospital Towns.)

- No reason in our opinion, nor in the Tribune editorial opinion on the next page.

XI. But If Benefis Isn't Regulated By COPA, Will It Still Be Regulated By Someone External To Benefis?

- Oh yes – in fact by many someones.
- Here are some examples of regulatory and external oversight bodies for Benefis (and the list continues on pages 8-10).

Regulatory Body

- Joint Commission on Hospital Accreditation (JCAHO)

What They Regulate/Establish Standards For

Overall accreditation and quality oversight body.
249 individual standards which focus on three main areas:

- 1) patient focused standards which include patient safety, ethics, rights and responsibilities
- 2) provision of care standards, which includes medical staff oversight
- 3) treatment and services standards including assessment, care, education, continuum of care, medication management, and infection control.

- OIG (Office of the Inspector General)
- IRS (Internal Revenue Service)

Investigation of potential EMTALA/COBRA violations when/if a complaint is filed.

Benefis' tax exempt status and community benefit.

For comments, tips or corrections

Call Managing Editor Gary Mosenman,
406-791-1465 or 800-438-6600,
or e-mail the editorial board at
tribletters@greatfallstribune.com

OPINION

Editorial board

Jim Strauss, President & Publisher
Elaine Kulhanek, Executive Editor
Gary Mosenman, Managing Editor
Mike Grate, Production Director

Sun should have set on COPA after job well done

The attorney general's office did no favor for health-care consumers — i.e. almost everyone — in northcentral Montana when it decided to continue regulating Benefits Health-care.

In an opinion issued Monday, Attorney General Mike McGrath said he saw insufficient evidence that competition had increased enough to justify ending the regulatory regime called a Certificate of Public Advantage, or COPA.

As a result, the COPA, with its expenses and its red tape, continues. It's not that the COPA has

been a bad thing. To the contrary. It was imposed a decade ago as a major condition of allowing the merger of Great Falls' two hospitals, Deaconess Medical Center and Columbus, into a single community-based facility. The idea was that regulation would protect consumers from exploitation by the newly sanctioned monopoly.

Whether because of the COPA or because of efficiencies born of the merger — or both — the merger had the desired effect: The quality of care increased and costs here are the low-

est in the state, and by a substantial margin. The odd thing about McGrath's opinion is that it appears to have it both ways.

He acknowledges that there have been "significant increases in competition for certain health care services provided by Benefits."

Foremost among the competitors are the Great Falls Clinic's ambulatory surgery center and Clinic Cancer Care, along with the recent purchase by the Clinic and an out-of-state health-care corporation of the Central Montana Surgical Hospital. Yet McGrath denies the request to get out from under the COPA, saying it

"has not prevented Benefits from successfully responding to increased competition in the past."

He cited the hospital's solid financial position, as well as its capital and technological improvements over the past nine years. The problem is that things are changing fast right now, and attending to the COPA itself is not without substantial cost to our community-managed hospital.

Ironically, McGrath cited statistics from statewide insurer Blue Cross Blue Shield — a business partner of the hospital's chief competitor — about the hospital's prices, which are con-

sistently lower than the three other large hospitals in the state, none of which is regulated by a COPA. We'd make four points about that:

1. Lower prices here serve area consumers well, and no one denies that;
2. But it's a big part of a situation that has made Benefits ripe for cherry-picking by new competition;
3. It says nothing about increased competition statewide and regionally, especially when you take new developments in technology and telemedicine into account; and
4. In the alternative, if the COPA is so accountable for a favorable outcome here in

Great Falls, maybe COPAs should be extended to other health-care facilities in the state.

In any event, a bright side to the attorney general's decision is that it leaves room for monitoring developments and revisiting the ruling.

"Such action may be necessary in the future, due to the rapidly changing health-care services market in Great Falls," McGrath said.

Presumably the hospital itself will keep the issue before the regulators.

In the meantime, we can thank Benefits and the COPA for accomplishing much of what they set out to do a decade ago.

Regulatory Body

What They Regulate/Establish Standards For

- U.S. Office of Civil Rights
Health information privacy rights (HIPAA).
- OSHA
Safety standards and programs.
- Nuclear Regulatory Commission (NRC)
Regulation of radioactive sources used at Benefis.
- DEA (Drug Enforcement Administration)
Regulates the distribution, storage and use of controlled substances in our Pharmacy.
- ATF (Alcohol, Tobacco and Firearms)
Regulates the distribution, storage and usage of tax-free ethyl alcohol.
- State of Montana
 - Department of Health
 - Licensure, inspection and regulation of Benefis Nursing Home and Hospice Program.
 - Privacy of alcohol and drug patients (42 CFR).
 - Department of Labor
 - Labor laws which regulate Benefis Human Resources practices.
 - Department of Transportation
 - Drivers via Department of Transportation.
- Mountain Pacific Quality Health Foundation
Regional review body overseeing and reporting on Benefis' quality. Via its Quality Improvement Organization arm it also oversees Nursing Home quality.
- Conditions of Participation for Organ Donation (Medicare) (COP)
Our organ donation program.
- FDA-MSQA (Federal Drug Administration)
Annual inspection of our Mammography services includes equipment, physics, processing consistency, patient documentation and outcomes.
- ACR (American College of Radiology)
Provides accreditation for our Mammography services. Also provides accreditation for Ultrasonography services at Benefis. Involves separate accreditation for each campus.

Regulatory Body

What They Regulate/Establish Standards For

- CARF (Commission on Accreditation of Rehabilitation Facilities) Accreditation of our rehab programs.
- CLIA (Clinical Laboratory Improvement Agency) Quality standards for our laboratory services.
- ACOS (American College of Surgeons)
 - 1) Comprehensive Community Cancer Center Accreditation
 - 2) Level II Trauma Accreditation
- JRCERT (Joint Review Committee on Education in Radiologic Technology) Provides regulation and oversight for our school of Radiologic Technology.
- ARRT (American Registry of Radiologic Technologist) All technologists must pass a national registry exam and complete 24 hours of continuing education every two years.
- SCIP (Surgical Care Improvement Project) Oversight of surgical infection rates at Benefis.
- AORN (Association of PeriOperative Registered Nurses) Supports registered nurses in achieving optimal outcomes for patients undergoing operative and other invasive procedures.
- IAHSMM (International Association of Health Care Central Services Materials Management) Supply standards in the ORs.
- AAMI (American Association of Medical Instrumentation) Instrumentation standards in the ORs.
- Vermont Oxford Network and NIC/Q Collaborative NICU Certification and national database for premature infants of 401-1500 grams weight.
- ESRD (End Stage Renal Disease) Network #16 Regulates and ensures the quality of care for patients receiving Renal treatments. The ESRD Networks have set Dialysis Outcomes Quality Improvement Guidelines for all dialysis units in the United States.
- American Nephrology Nurses Association Sets the Clinical Standards of care for Nephrology Nurses.
- Quality Assurance Bureau of the Department of Public Health and Human Services Benefis' substance abuse services regulations.

Regulatory Body

What They Regulate/Establish Standards For

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">• U.S. Probation Office• Community Health Accreditation Program• Numerous state and national licensing bodies to license the many health professions who practice at Benefis | <p>Review of Benefis' contracted substance abuse services for the court system.</p> <p>Certification of Benefis/Spectrum DME Programs.</p> <p>Physicians, Nurses, Pharmacists, etc. There are 467 job classifications at Benefis and 334 of those require licenses or certification! 1334 of Benefis' 2400 employees are licensed or certified.</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

XII. In conclusion, COPA has outlived its time and the reason (lack of competition) it was originally put into place has disappeared over the past ten years. COPA unfairly hampers Benefis' ability to compete. Further, COPA raises health care costs in Great Falls by \$880,000 per year

We need your help.

XIII. Where do we need your help right now?

- Benefis is in conversation with the Attorney General's Office to remove the aspects of COPA that limit Benefis' ability to compete and that raise health care costs in Great Falls. A request was submitted to him on 11-29-06 and we will provide you a copy of that request.
- **You can help by contacting the Attorney General and letting him know that you support removing at least these aspects of COPA, or COPA entirely.**

XIV. What If Negotiations With The Attorney General Are Unsuccessful?

- Then we need to introduce legislation to remove COPA as soon as possible in the 2007 legislative session.
- Should we need to pursue the legislative approach, and we hope we won't, then we'll need your support of the legislation.

Thank you.

ATTACHMENT #2

January 25, 2007

Dear Senators and Representatives,

As you know, legislation has been introduced (SB 323, Senator Jesse Laslovich, D-Anaconda and Representative Rick Ripley, R-Wolf Creek) which will grant Benefis Healthcare (Benefis) legislative relief from the Certificate of Public Advantage (COPA) under which it has been operating for over 10 years. The importance of this bill to the healthcare safety net Benefis provides Great Falls and surrounding communities cannot be overstated.

Over the past several weeks, Benefis has become aware of two erroneous arguments raised in opposition to the legislation: (1) elimination of the COPA will allow Benefis to engage in "economic credentialing"; and (2) without the COPA, Benefis will substantially increase its charges. We, representing the Benefis Healthcare Board of Directors, will address each of these concerns in turn.

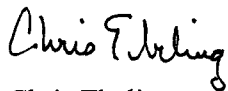
Benefis has never engaged in "economic credentialing" against physicians who compete against it (or put another way, removed any physician who competes with Benefis from the Medical Staff). Any statements or allegations to the contrary are simply not true, and Benefis has no plans of doing so in the future.

Make no mistake, Benefis' locally comprised citizen board is extremely sensitive to healthcare costs in Great Falls. Benefis prices have been very competitive since the merger, and we exist, in part, to ensure healthcare costs will continue to be affordable in this community. To that end, our Board and management team have set a goal to keep the prices of Benefis Healthcare within the lower half of Montana hospitals with similar scope and levels of service in this state. We are the only hospital board in the entire State of Montana, of which we are aware, to make such a commitment to our community and region.

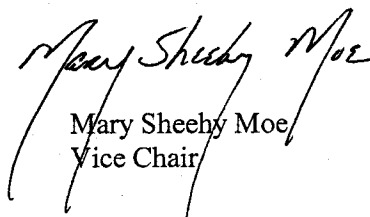
Benefis accepts the newest competition in town (namely the recent acquisition of the Central Montana Hospital by a partnership of Great Falls Clinic and Essentia Healthcare, a large out-of-state corporation) is here to stay. Due to this new competition, Benefis will likely lose its sole community provider status, resulting in a direct loss of Medicare funds in excess of \$1.5 million annually. We will compete, but the COPA must be eliminated to make the playing field less slanted in favor of the new for-profit, physician-owned hospital.

Benefis is a not-for-profit, mission-driven provider. As such, Benefis is the only hospital in this city that has a 24/7 emergency room and takes every patient in need without regard for his or her ability to pay. It is incumbent upon us to do everything in our power to ensure the continued viability of this crucial community asset. In this new competitive environment, relief from the COPA, which is having a growing adverse affect on Benefis, is absolutely critical.

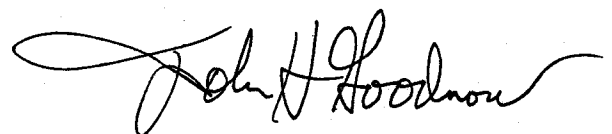
Sincerely,



Chris Ebeling
Chair



Mary Sheehy Moe
Vice Chair



John H. Goodnow
CEO

January 29, 2007

Sen. Trudi Schmidt
4029 6th Avenue South
Great Falls, MT 59405

Dear Trudi:

We've heard that you are concerned that Benefis will reduce services post COPA. Although it may just be a rumor, we want to make sure such concerns are addressed.

First, in the 10+ years since the merger **numerous** (we'll be happy to provide you the extensive list if you'd like it) services/programs have been added and none eliminated. The many services/programs added had nothing to do with the COPA and the reason none were eliminated also was not due to any COPA prohibitions.

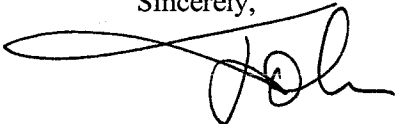
The many additions (and no eliminations) were because of Benefis' mission "We who are Benefis Healthcare are dedicated to our Christian tradition as a healing ministry to provide excellent physical, emotional, and spiritual care to all in need", and because we are a not-for-profit community asset governed by a dedicated volunteer board of directors who take the mission and our role as a community asset very seriously.

To think services would be eliminated post COPA misunderstands Benefis' commitment to its mission and the dedication and commitment of its local, volunteer Board. Rest assured that regardless of who suggested that notion, those false fears of eliminated services would not materialize if COPA is eliminated.

The legitimate fear is if Benefis continues to be overly regulated by a now unnecessary COPA (which impedes Benefis' ability to compete with for-profit, physician directed competition) what it will do to Benefis financial condition and its ability to meet its mission. **Keeping COPA in place harms Benefis' ability to compete, raises Benefis' costs, and threatens Benefis' ability to continue to offer a full and complete range of services and programs.**

We hope this addresses any concern you may have. We, of course, are available to meet with you for further discussion should you desire.

Sincerely,



John H. Goodnow, CEO
Benefis Healthcare System

JHG:ycb

Cc: Other members of the Great Falls and Cascade County Legislative Delegation
Other members of the Benefis Healthcare System Board of Directors
Amy Astin, Director of Advocacy

ATTACHMENT #3

Chief of The Blackfeet Nation

Earl Old Person, Chief

P.O. Box 850

Browning, Montana 59417

(406) 338-7521 or 338-7276



Governor Brian A. Schweitzer
Office of the Governor
Montana State Capitol
Box 200801
Helena, Montana 59620-0801

January 26, 2007

Dear Governor Schweitzer:

As the Chairman of the Blackfeet Tribe, I am writing in support of the elimination of the Certificate of Public Advantage (COPA) for Benefis Healthcare in Great Falls, Montana.

Benefis Healthcare has gone to great lengths to serve the Native American population in Montana. Recently, Benefis opened the first and only Native American Welcoming Center in any hospital in the State of Montana. This center provides a place of solace, meditation and worship for Native American patients as well as their friends and families during times of illness and hardship. Our tribal members have had many favorable comments regarding this service and have informed me of their appreciation.

In addition to planned charity care, Benefis writes off approximately \$94 million annually in unrecovered costs from patients who cannot afford to pay their medical bills. This includes uninsured or underinsured populations as well as those covered Medicaid or Medicare.

And as the community's only not-for-profit hospital, Benefis provides a full range of services including an ER, ICU, NICU, mental health, air ambulance, and other services that lose money every year. Benefis continues to provide these services because of its commitment to the people of Montana. It is only able to do so by subsidizing these activities with dividends from revenue generating services. Although COPA was created in lieu of competition ten years ago, it is clearly defunct in purpose today. And though the need for COPA no longer exists, COPA's effects are soon to be increasingly punitive, especially as Benefis prepares to enter the bond market.

Therefore, as Chairman and Chief of the Blackfeet Nation, I sincerely request your favorable consideration to eliminate the Certificate of Public Advantage for Benefis Healthcare.

Sincerely,

Earl Old Person, Chairman/Chief
Blackfeet Tribal Business Council

Chief of The Blackfeet Nation

Earl Old Person, Chief

P.O. Box 850

Browning, Montana 59417

(406) 338-7521 or 338-7276



Honorable Mike McGrath
Attorney General
Montana Department of Justice
Box 200401
Helena, Montana 59620

January 26, 2007

Dear Governor Schweitzer:

As the Chairman of the Blackfeet Tribe, I am writing in support of the elimination of the Certificate of Public Advantage (COPA) for Benefis Healthcare in Great Falls, Montana.

Benefis Healthcare has gone to great lengths to serve the Native American population in Montana. Recently, Benefis opened the first and only Native American Welcoming Center in any hospital in the State of Montana. This center provides a place of solace, meditation and worship for Native American patients as well as their friends and families during times of illness and hardship. Our tribal members have had many favorable comments regarding this service and have informed me of their appreciation.

In addition to planned charity care, Benefis writes off approximately \$94 million annually in unrecovered costs from patients who cannot afford to pay their medical bills. This includes uninsured or underinsured populations as well as those covered Medicaid or Medicare.

And as the community's only not-for-profit hospital, Benefis provides a full range of services including an ER, ICU, NICU, mental health, air ambulance, and other services that lose money every year. Benefis continues to provide these services because of its commitment to the people of Montana. It is only able to do so by subsidizing these activities with dividends from revenue generating services. Although COPA was created in lieu of competition ten years ago, it is clearly defunct in purpose today. And though the need for COPA no longer exists, COPA's effects are soon to be increasingly punitive, especially as Benefis prepares to enter the bond market.

Therefore, as Chairman and Chief of the Blackfeet Nation, I sincerely request your favorable consideration to eliminate the Certificate of Public Advantage for Benefis Healthcare.

Sincerely,

Earl Old Person, Chairman/Chief
Blackfeet Tribal Business Council

4251 Central Avenue, #1
Great Falls, MT 59405-1629
January 11, 2007

Honorable Mike McGrath
Attorney General
Montana Department of Justice
P.O. Box 2011401
Helena, MT 59620-1401

In re: Urgent need to eliminate COPA for Benefis Healthcare

Dear Attorney General McGrath:


As a local resident as well as a Sister of Providence, I follow closely any matters that involve Benefis Healthcare. Because I belong to the congregation of women religious that owned/operated or sponsored Columbus Hospital and the later Benefis Healthcare for just over 100 years, I am gratified each time I see or hear evidence that Benefis under the current administration continues the legacy of compassionate care bequeathed by the former sponsors.

For the above reasons, I wish to register my ardent hope and request for the State's cessation of the COPA restraints that now threaten Great Falls' only full-service hospital with diminished income and limitations on appropriate expansion.

One could construe a bias favoring for-profit, doctor-owned hospitals in view of the speedy granting of approbation for a local such facility, while simultaneously failing even to reconsider the COPA imposition on not-for-profit Benefis after its fifth year and more as a merged entity.

Now that national attention has been drawn to the negative financial impact of doctor-owned, for-profit healthcare institutions on not-for-profit facilities (cf. TIME, December 11, 2006), certainly Benefis deserves respect for its meriting a plethora of awards for excellence while working within the constraints of COPA. No longer the sole hospital in Great Falls, Benefis must now be freed from the constrictions that make the present situation an uneven playing field. The likelihood of cherry-picking of patients to the financial advantage of the doctor-owned, for-profit hospital imperils Benefis's ability to continue thriving at its high level of quality healthcare and to offer the breadth of health services needed by the regions and clients it serves. The time has come to relieve Benefis Healthcare of the time-consuming oversight and limitations COPA places on the administration and staff.

Respectfully,


Sister Maryann Benoit, S.P.

C: John Goodnow, Benefis CEO

DIOCESE OF GREAT FALLS-BILLINGS

Founded 1904

January 10, 2007

Attorney General Mike McGrath
Montana Department of Justice
P O Box 201401
Helena MT 59620

Dear Attorney General McGrath,

I am writing in support of the elimination of the Certificate of Public Advantage (COPA) for Benefis Healthcare in Great Falls.

Benefis is a faith-based, not-for-profit, mission-driven hospital, committed to serving everyone in need of medical care. Benefis operates 502 licensed beds, and serves 225,000 residents within a 45,000 square mile region – one of the poorest regions in the state of Montana.

Benefis treats 21% of Montana's Medicaid patients, and averaged 33 Medicaid inpatient stays per day in 2004. Last year, Benefis Healthcare recorded 2,256 Medicaid inpatient stays, and lost over \$5 million on these stays alone.

As a mission-driven provider, Benefis provides millions of additional dollars in charity care for patients with no means to pay. Last year, Benefis spent \$7 million to provide care for the poor in this region. This year Benefis has only deepened its commitment to charity care, exceeding last year's expenditures by \$1 million.

In addition to planned charity care, Benefis writes off approximately \$94 million annually in un-recovered costs from patients who cannot afford to pay their medical bills. This includes uninsured or underinsured populations as well as those covered by Medicaid or Medicare.

Benefis has also gone to great lengths to serve our Native American population. Just this past year, Benefis opened the first and only Native American Welcoming Center in any hospital in the state of Montana. This center provides a place of solace, meditation and worship for patients as well as their friends and families during times of illness and hardship.

Benefis has also demonstrated its commitment to Native American patients financially, writing off approximately \$14 million in un-recovered costs annually – when patients or their families are unable to pay their medical bills.

And as the community's only not-for-profit hospital, Benefis provides a full range of services including an ER, ICU, NICU, mental health, air ambulance, and other

services that lose money every year. Benefis continues to provide these services because of its commitment to the residents of Great Falls and the surrounding area, but it is only able to do so by subsidizing these activities with dividends from other revenue-generating services.

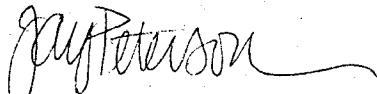
Due to new market competition, these dividends are already shrinking, and will continue to do so, thus presenting thorny challenges for Benefis in the future. If Benefis is to meet this new challenge of competition, it must be allowed to function as all other hospitals in the state of Montana – unfettered and free from the needless regulations of the COPA.

Although COPA was created in lieu of competition ten years ago, it is clearly defunct in purpose today. And though the need for COPA no longer exists, COPA's effects are soon to be increasingly punitive, especially as Benefis prepares to enter the bond market.

The Great Falls community relies heavily upon its only full-service hospital, and the future viability of Benefis is a community concern. Please consider that COPA provides no net benefit for the residents of Great Falls, and in fact jeopardizes our only mission-driven, not-for-profit hospital. Benefis Healthcare delivers high quality care to all, and is a community asset we cannot afford to lose.

Thanking you for your attention in this matter, I am

Sincerely yours,



Very Rev. Jay H. Peterson
Diocesan Administrator

✓ BCC. Mr John Gordonow



December 21, 2006

Attorney General Mike McGrath
Department of Justice
P.O. Box 201401
Helena, MT 59620-1401

Re: COPA applied to Benefis Healthcare

The Honorable Mike McGrath:

I am writing this letter in support of Benefis Healthcare's request to sunset the Certificate of Public Advantage. I believe this restriction should be lifted since it puts Benefis Healthcare at a marketplace disadvantage and will have a negative long-term impact on healthcare in the community of Great Falls.

I have worked exclusively in the design/ planning of hospitals & medical facilities throughout Montana & the surrounding region for the last twenty years. During that time, I've had the good fortune to observe the hard work of hospital administrators, physicians, hospital boards and a variety of medical-providers. I've seen how difficult their jobs have become in trying to provide quality healthcare within a highly-regulated industry that makes most businesses seem simple by comparison.

I ask your consideration of sun setting COPA for the following reasons:

1. **Sole provider status no longer applies.** When COPA was applied to Benefis in 1996, it made sense to have some oversight and regulation on this new healthcare entity that replaced two competitive hospitals. We all understand the concern about monopolies and their ability to control pricing structure to the public. In the ensuing ten years, the Great Falls community has seen the growth of other healthcare providers, such as the Great Falls Clinic, so there is adequate choice and competition in that marketplace. COPA is simply no longer relevant.
2. **Fair competition in the marketplace.** In my work with hospitals, I often see the perception that large medical centers are simply "cash cows" that can fund and pay for most anything they undertake. The public doesn't understand that only certain services are good income streams, such as Radiology & Surgery while the hospital must counterbalance the services, such as the Emergency Department, that typically lose money. The hospital is obligated to operate their ER on a 24/7 basis and take all who request medical services. As a businessman, it seems only logical to me that we allow the hospital to make profit on those service lines where they can to help offset the losses in the service lines are badly needed by the community. If the competition in town is allowed to provide those services that only generate profit while the hospital is required to deliver needed services that lose money, the long-term scenario for the hospital, and community, seems grim.
3. **Quality Healthcare.** I deal with all the large & small healthcare facilities in the state and I know of no other instance where the hospital is handcuffed with regulations such as COPA while their competition is not. Delivering the full spectrum of healthcare at the current quality levels, as

N:\Users\JIMS\PERSONAL\MMcGrathltr.doc

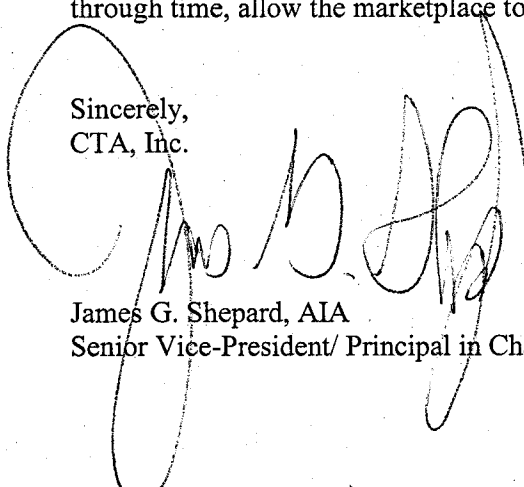
Benefis does, can only be compromised by this restrictive regulation which applies to no other provider in Montana.

4. **Montana made/ Economic Development.** Our firm has offices in 7 Montana cities employing over 270 Montanans. We have grown @ 15% for the last ten years and hire young architects & engineers from our Montana Universities. We consider ourselves to be a Montana success story. A major reason for our success is the support of key clients within the state, such as Benefis Healthcare.

Some of the Montana-based hospitals choose to go outside the state for their architectural/ engineering services on the misconception they'll get expertise that is somehow better than that available within the state. If CTA had their support, we could be a firm of over 500 people! Simply put, Benefis Healthcare's continued economic health is crucial to CTA's health as a Montana-based firm. Their economic health applies to many other businesses in the Great Falls Community & beyond.

In summary, I'm asking you to let Benefis Healthcare compete on a level playing field with their competition...both in the Great Falls Community and in the Montana marketplace. I have learned one thing in my years of planning with various medical communities. Doctors need hospitals and hospitals need doctors. Sometimes one group or the other loses sight of this and they decide to compete rather than cooperate. In my estimation, removing COPA will remove unfair advantage on either side which will, through time, allow the marketplace to demand the cooperation needed for the Great Falls community.

Sincerely,
CTA, Inc.



James G. Shepard, AIA
Senior Vice-President/ Principal in Charge of CTA Health group

December 20, 2006

Mike McGrath, Attorney General
Department of Justice
215 N. Sanders, Third Floor
P.O. Box 201401
Helena, MT 59620-1401

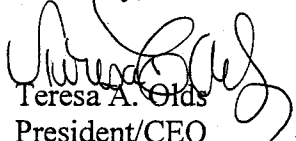
Dear Attorney General McGrath:

The Great Falls Area Chamber of Commerce respectfully requests that your office re-evaluate its position relative to lifting its Certificate of Public Advantage (COPA) for Benefis Healthcare.

The lifting of COPA is an integral part of the landscape of healthcare within our community. We believe that Benefis Healthcare should have the same opportunity as other hospitals to better serve our community with increased care options.

We appreciate your reconsideration of COPA as it relates to Benefis Healthcare. Please feel free to contact me directly if you have any further questions.

Sincerely,



Teresa A. Olds
President/CEO

Great Falls Area Chamber of Commerce

cc: John Goodnow, CEO Benefis Healthcare ✓

McLaughlin
Research



Institute
for
Biomedical Sciences

**Scientific Advisory
Committee**

David Baltimore, Ph.D.
President, California
Institute of Technology

David Cameron, Ph.D.
Professor Emeritus,
Dept. of Biology
Montana State University

Neal G. Copeland, Ph.D.
Professor & Co-Head
Cancer Genetics Laboratory
Institute of Molecular and
Cellular Biology
Singapore

Jeffrey A. Frelinger, Ph.D.
Professor, Dept. of
Microbiology and
Immunology
University of North Carolina
Medical School

Leroy E. Hood, M.D., Ph.D.
President & Director
Institute for Systems Biology

Nancy A. Jenkins, Ph.D.
Professor & Co-Head
Cancer Genetics Laboratory
Institute of Molecular and
Cellular Biology
Singapore

James A. Spudis, Ph.D.
Douglass M. and
Nola Leishman
Professor of
Cardiovascular Disease
Department of Biochemistry
Stanford University

Irving L. Weissman, M.D.
(Chairman)
Karel and Avica Beekhuis
Professor of Cancer Biology
Stanford University School
of Medicine

Board of Directors

Leslie Oakland Thomas
Chairman
Nancy O'Brien
Vice Chairman
Jack Harrison
Secretary
Robert E. Nebel
Treasurer

Charles Abernathy
Ardith Alkon
Shannon Anderson
Gary Bjelland
David Cameron, Ph.D.
George A. Carlson, Ph.D.
Nancy Davidson
Randy Gray
Tu-Hi Hong, M.D.
Bjarne Johnson
Phillip A. Krezowski, M.D.
Richard E. Lauritzen, M.D.
Jann Leppien, Ph.D.
Sally McGregor
Sandy Peters
Kathy Rice
Evelyn Rider, M.D.
Bradley Talcott
Irving L. Weissman, M.D.
James Wyldor
Arlene Reichart
(Honorary Trustees)

December 14, 2006

Attorney General Mike McGrath
Department of Justice
P.O. Box 201401
Helena, MT 59620-1401

RE: Benefis' Request Regarding COPA

Dear Mr. McGrath:

I am writing to you on behalf of McLaughlin Research Institute's Board of Directors to encourage you to consider ending or providing relief from the COPA restrictions on Benefis Healthcare. The McLaughlin / Benefis alliance has made the McLaughlin Board aware of how the COPA has restricted the operations of Benefis Healthcare.

Eight years ago McLaughlin / Benefis formed an alliance with a shared mission of improving healthcare through research and education. The alliance requires McLaughlin and Benefis to have non-voting member representation on our respective boards. Each board agenda includes reports by the non-voting members helping board members maintain awareness of the activities of each organization.

Since you denied the previous request by Benefis to end COPA, the Benefis representative at McLaughlin Board meetings has explained the difficulty of working under the revenue cap and reporting requirements of COPA. He talked about working under the COPA requirements while competition for healthcare services in Great Falls has increased. In particular, the Great Falls Clinic, the largest organized physician group in Montana, now co-owns a specialty hospital.

The physicians are able to refer the most lucrative and cost effective cases to their hospital and send the complicated and least able to pay cases to Benefis. This practice will adversely affect Benefis's profit margin and its ability to grow and provide the best medical services for Great Falls and North Central Montana. Benefis must have COPA relief in order to compete!

1520 23rd Street South
Great Falls, Montana 59405

406 . 452 . 6208 Phone
406 . 454 . 6019 Fax

12/28/2000 11:00 4004040013

It is important that you understand that the Benefis Healthcare Board and Staff have recognized the importance of McLaughlin's basic research in developing new therapies to treat diseases. McLaughlin Research Institute is unique because it is small and does not have an affiliation to a university or medical school. The Benefis /McLaughlin alliance has been critical to our stability and growth.

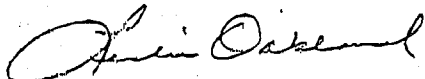
The McLaughlin /Benefis alliance has been instrumental in providing education and working to improve cancer care. One example is our program to provide education on genetic ethics. Members of the clergy, physicians, nurses, and Supreme Court justices served on our committees and made presentations at our conferences. Genetic ethics will be an issue that will impact our society even more in the future.

The McLaughlin / Benefis relationship was key to establishing the McLaughlin / Sletten Cancer Institute / Huntsman Cancer Institute Alliance. This Alliance is important to providing the best care for individuals and their families who suffer from cancer.

COPA restrictions, along with increased competition, will take away Benefis's ability to participate in these alliances. Ultimately, COPA will limit Benefis' ability to provide the best care for all patients.

Again, we urge you to end or provide relief from the COPA restrictions on Benefis. Thank you for considering this important matter.

Sincerely,



Leslie Oakland, President
Board of Directors

M c L a u g h l i n I n s t i t u t e
R e s e a r c h B i o m e d i c a l S c i e n c e s

NMHA
NORTHCENTRAL MONTANA
HEALTHCARE ALLIANCE

December 11, 2006

Attorney General Mike McGrath
Montana Department of Justice
P.O. Box 201401
Helena, MT 59620-1401

Dear Attorney General McGrath,

The undersigned are members of the Board of Directors of the Northcentral Montana Healthcare Alliance. We are all CEOs of small and rural hospitals in our 10 county region.

The Directors of the NMHA would like to add their voices to those who are asking you to reconsider your decision to leave the Certificate of Public Advantage in place to regulate Benefis Healthcare in Great Falls.

All of the member facilities of the NMHA are not-for-profit community hospitals and as such, receive benefit and support from our relationship with Benefis Healthcare. We stand by our earlier letter of support for the relief of COPA regulation as being initially appropriate in 1996, significantly successful 1996-2006, and now due to significant competition, no longer justified.

The presence of an increasingly competitive environment in the healthcare system in Northcentral Montana is undeniable. Many of the members of the NMHA compete with each other for patients and all of them compete with the larger hospitals in the state. But this competition has a "level playing field" and is tempered by common mission, ethical behavior, and united efforts toward the provision of high quality healthcare.

The for-profit trio of Blue Cross/Blue Shield, Great Falls Clinic, and their large out-of-state partner, Essentia Health, has created a healthcare steerage mechanism that will be damaging to Benefis Healthcare and limit choice to patients in our region. And if you don't believe Essentia is a "competitor" just view their "Key Strategies" on their website.

We understood and supported the original intent of the COPA as providing a regulatory substitute for competition following the merger of the two Great Falls hospitals. The need for such regulation no longer exists, in fact, in the face of competition bent on the culling of profitable, fully insured procedures away from community hospitals, the initially supportive oversight of the COPA becomes punitive in nature.

Benefis Healthcare
Great Falls

Big Sandy Medical
Center
Big Sandy

Blackfeet Community
Hospital
Browning

Fort Belknap Service
Unit
Harlem

Liberty County
Hospital
Chester

Marias Medical Center
Shelby

Missouri River Medical
Center
Fort Benton

Mountainview Medical
Center
White Sulphur Springs

Northern Montana
Hospital
Havre

Northern Rockies
Medical Center
Cut Bank

Phillips County
Medical Center
Malta

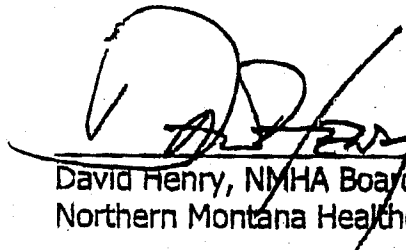
Pondera Medical
Center
Conrad

Sweet Memorial
Nursing Home
Chinook

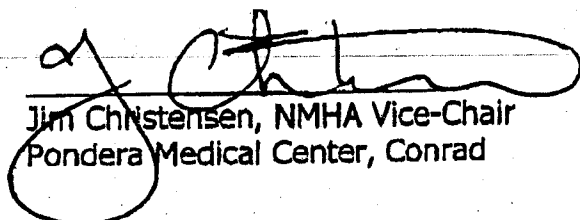
Teton Medical Center
Choteau

We ask you to consider the new information submitted by Benefis Healthcare and others and reconsider your decision to leave the COPA in place. The COPA has served its purpose and must now be eliminated.

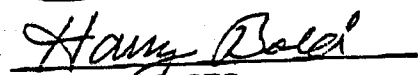
Sincerely,



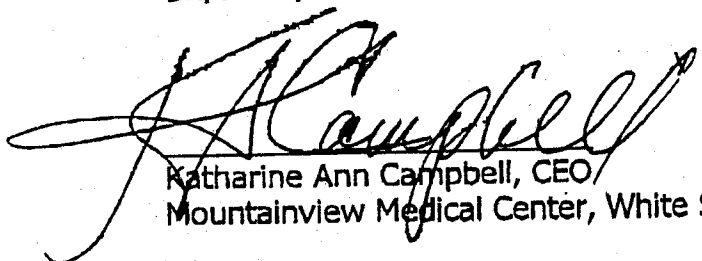
David Henry, NMHA Board Chair
Northern Montana Healthcare, Havre




Jim Christensen, NMHA Vice-Chair
Pondera Medical Center, Conrad



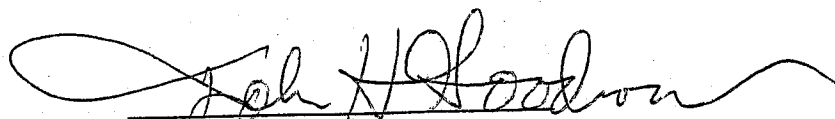
Harry Bold, CEO
Big Sandy Medical Center, Big Sandy




Katharine Ann Campbell, CEO
Mountainview Medical Center, White Sulphur Springs




Mark Cross, CEO
Marias Medical Center, Shelby



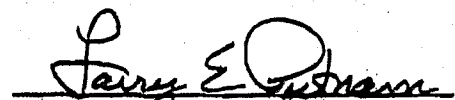
John H. Goodnow, President/CEO
Benefis Healthcare, Great Falls




Jack W. King, Executive Director
Northcentral Montana Healthcare Alliance



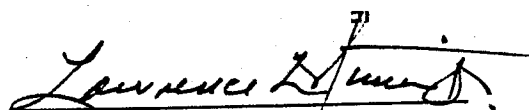
Jay Pottenger, CEO
Missouri River Medical Center, Fort Benton



Larry Putnam, CEO
Phillips County Hospital, Malta



Cherie Taylor, CEO
Northern Rockies Medical Center, Cut Bank



Lawrence L. White, Jr., Interim CEO
Liberty County Hospital, Chester



Pondera Medical Center

(406) 271-3211

805 Sunset Blvd.

PO, Box 758

Conrad, MT 59425-0758

www.ourpmc.com

Honorable Mike McGrath
Attorney General
Montana Department of Justice
PO BOX 201401
Helena, MT 59620

Dear Honorable Mike McGrath:

I again take pen in hand to urge you to repeal the COFA regulations currently enacted upon Benefis Health Care.

As you know, circumstances regarding the COFA have now come nearly 180 degrees-needing only an increased depth of impact before reaching full realization. One can no longer argue Benefis Healthcare enjoys any unfair competitive advantage as the sole "Hospital" in the Great Falls market.

In fact, one may reasonably argue that the current intimacy between the new "Central Montana Hospital", the Great Falls Clinic and BC/BS creates a real anti-community, anti-competition atmosphere, generating very real arguments relative between provider, insurer, fiscal intermediary and the Great Falls Clinic.

Great Falls Clinic re-routing 20-50 surgical patients per month to their own hospital should be enough of a demonstration project. Clearly, these self-referrals from Benefis non-profit surgery department to the new for-profit, investor/doctor owned hospital will have a tremendous negative impact on Benefis Healthcare.

Realizing the impossibility of making comparisons between Benefis and my small, Critical Access Hospital, there may be some value in understanding the full value of each surgical case being self-referral.

A reduction of only 4 surgical cases per month would be adequate to effectively close the entire surgical program at Pondera Medical Center. As "on-call" status of professional staff (largely unacknowledged in a Medicare cost report) remains fixed at a point of minimal adequate coverage, fewer surgical cases will result in either raising fees per case or reducing staff coverage, thereby potentially reducing one more non-profit service in the Great Falls healthcare sector.

Please know that the concept of "competition driving quality expectations" is certainly not unique to healthcare. We all wish for healthy competition to weed out the poor performers and stabilize pricing-but only if all the competitors enjoy equal, full capability of fully competing. Under the current COPA, Benefis is severely handicapped and will face immeasurable financial challenges to maintaining their role as support to

all Critical Access Hospital's and their tens of thousands of patients, all within hundreds of miles of Great Falls.

I urge you to revisit this issue and again recall the intent of the conditions in allowing Great Falls to move to a single provider community and to allow that these conditions simply no longer exist in the current healthcare market in Great Falls today.

I remain available at your request to provide any documentation or testimony that may further the case for COFA removal.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Christensen', with a large, stylized loop at the end.

Carl J. Christensen, CEO
Pondera Medical Center



NEW WEST HEALTH SERVICES

New West Health Plan-A Division of New West Health Services

December 11, 2006

Mike McGrath, Attorney General
Department of Justice
215 N. Sanders, Third Floor
P.O. Box 201401
Helena, MT 59620-1401

*Hand Delivered and
Via Fax: 444-3549*

Dear Attorney General McGrath:

New West Health Services respectfully requests that your office re-evaluate its position relative to lifting or substantially altering its Certificate of Public Advantage (COPA) for Benefis Healthcare. New West Health Services is a Montana domiciled health insurer and health plan, which competes with Blue Cross and Blue Shield of Montana (BCBSMT) to provide health care coverage for Montanans. Arranging for care through a contracted provider delivery system is an essential element, in enabling good, cost affordable access to healthcare for people living in our Great Falls service area.

Unfortunately, New West Health Services is substantially impeded in competing with Blue Cross and Blue Shield of Montana in the Great Falls area, due to the controlling and anti-competitive nature of the joint venture between BCBSMT and the Great Falls Clinic. Montana Care, through various arrangements, we believe, limits, if not actively discourages its participating providers from contracting with other health plans and payers on a cost affordable basis. In theory, providers participating with BCBSMT in the Montana Care joint venture may be open to contracting with other payers. Nonetheless, the reality that we face is that there is a great reticence to do so. Consequently, the provider network that New West Health Services is able to offer in the Great Falls service area is much restricted and therefore not sufficiently competitive.

New West, though, is able to contract for hospital and other health care services. As you are probably aware, most health insurance customers select payers based on the completeness of the physician panel. Montanans living and working in the Great Falls service area make decisions about their health insurance coverage based upon whether their physician is in the network. Over the past decade, unlike the early days of HMO expansion, most employers, agents and individuals expect health insurers to offer a panel of physicians that includes the vast majority of qualified and credentialed physicians. Failure to do so, leads to a non-competitive product, bolstering the market position of Blue Cross and Blue Shield of Montana and its joint venture providers. Additionally, those providers share in the profits of the venture, strengthening their position in the market and providing capital to expand their facilities and to recruit additional physicians. These enhanced provider capabilities further strengthen BCBSMT and Montana Care's market competitiveness, leading to more and more business.

"High-quality, customer focused health insurance choices for all Montanans"

222 North 32nd Street, Suite 900
Billings, MT 59101
(888) 500-3355

130 Neill Avenue
Helena, MT 59601
(406) 457-2200 or (888) 500-3355

1203 Highway 2 West, Suite 45
Kalispell, MT 59901
(406) 751-3333 or (877) 889-8405

3700 Russell, Suite 108
Missoula, MT 59804
(888) 500-3355

Unfortunately, this cycle of reinforcing prosperity for the participating payer, BCBSMT and the participating providers, limits the choice of healthcare coverage for Montanans living or working in the Great Falls service area. The lack of choice in time leads to premium increases beyond those warranted and what would be required, in a competitive market, with other viable health plans and payers. Whether or not that lack of competitiveness is exhibited in high premiums today, it has the full potential to do so over time. And regardless of the cost of healthcare reflected in premiums today, the fact is that Montanans have less choice relative to the service and quality of their health care coverage.

We find BCBSMT's request to your office, dated July 7, 2006, to maintain the COPA to be self-serving in its own interests to retain a strong, controlling and anti-competitive position in the health insurance market. It is ironic that BCBSMT focuses on the potential of higher hospital charges even as it seeks to continue to maintain control over the provision of the cost of health care coverage in the Great Falls market. Furthermore, it is surprising that BCBSMT's focus is so strongly oriented to hospital charges as a driver of healthcare costs, when most progressive health insurers are focused on the variations in healthcare practices, patient safety, system inefficiencies and provider incentives related to process and outcomes improvement. It is these areas that afford opportunities for delivering higher quality care in a more cost affordable manner for Montanans living in the Great Falls service area.

Montana Care as a joint venture between BCBSMT and its participating providers is, on the surface, simply a market phenomenon reflective of free enterprise. In theory, New West and other payers can enter into similar arrangements, which would then seek to compete with Montana Care and BCBSMT. The reality, though, is quite different. Due to the dominant position of both BCBSMT, including its substantial reserves, and the increasingly dominant position of the Great Falls Clinic through its expanding facilities and physician presence (funded by the dominance of BCBSMT), no payer, realistically can put together competitive arrangements without a substantial infusion of capital which would need to be built into its cost and premium structure. Building that incremental cost in, would, of necessity, make the price of its products uncompetitive. In effect, BCBSMT has locked up the Great Falls market.

Lifting COPA accomplishes at least two and possibly three important things. First, it enables Benefis Healthcare to compete as a comprehensive provider and an alternative to the Great Falls Clinic. Benefis needs to expand its array of services outside its inpatient walls, including the recruitment of physicians in substantial numbers. Doing so provides a more potent competing network to Montana Care that would provide substantially more choice to Montanans in the Great Falls service area. It also enables Benefis to better fund this recruitment. Secondly, the growth in provider alternatives and the increased viability of health payer competition will alter the willingness of Montana Care providers to contract with other health plans such as New West Health Services on a cost affordable basis. Cost affordability is vital in this day given the high cost of health care coverage. Finally, lifting COPA changes the dynamics in the market injecting movement in what is now a bifurcated and un-level market, tilted away from providers which are not clearly aligned with BCBSMT. Again, the irony is that the power in the market lies with the physician network, not on the hospital side as conveyed by some in taking positions against the lifting of the COPA.

Mike McGrath, Attorney General

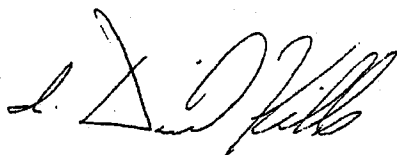
December 11, 2006

Page 3

With COPA lifted, we believe that New West Health Services and other payers providing an alternative to BCBSMT domination will compete actively in the Great Falls market leading to lower premiums and more cost affordable health care. Health care quality and service will also improve in an open competitive market as providers compete on a variety of variables. Significantly, Montanans will have more choice. New West Health Services is dedicated to that mission of choice and competition, and we believe that the Attorney General for the State of Montana should reflect its commitment as well, to cost affordable health care choices by lifting the COPA on Benefis Healthcare. We respectfully make that request.

If you or someone in your office would like to contact me to discuss this letter further, I would be glad to do so and can be reached at (406) 457-2220 in Helena, Montana.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Kibbe", with a stylized flourish at the end.

David Kibbe
Chief Executive Officer



**NORTHERN
MONTANA**

Health Care

P.O. Box 1231

30 Thirteenth Street

Havre MT 59501

December 6, 2006

Attorney General Mike McGrath
Montana Department of Justice
P. O. Box 201401
Helena, MT 59620-1401

Subject: 10-Year Review of COPA

Dear Attorney General McGrath:

In your last review of the COPA continuation I was somewhat surprised to see how heavily your office relied on the comments and the analysis done by BlueCross/BlueShield of Montana. Your consultant seemed to give them tremendous credibility in their analysis of the Great Falls market and yet I am not sure that your consultant was fully aware of the relationship between the Great Falls Clinic and BlueCross/BlueShield.

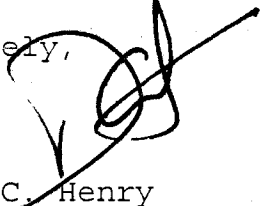
Those of us in the neighborhood have known since 1996 of the interwoven relationship and joint venture that the Great Falls Clinic and BlueCross/BlueShield of Montana have as demonstrated in Exhibit 1, which is a page from the BlueCross/BlueShield audit in 1997. With a commitment from Blue Cross to pay the Great Falls Clinic almost \$10 million over 15 years and add an additional \$4 million by November of 2005, it is clear to see that any comments coming from BlueCross/BlueShield of Montana that would restrict Benefis' ability to compete with the Great Falls Clinic are jaded and inappropriate.

I hope that your office again reviews the request to release Benefis from the COPA in that it is imperative to the area hospitals that Benefis remain strong and competitive. The continuing thrust by the Great Falls Clinic to enhance self-referral projects seems to run contrary to the themes in the

new Congress. Competition is a good thing. Great Falls healthcare now has full-blown competition and your office should step aside or get more involved in Billings and Missoula where they have competing hospitals.

Thanks for reconsidering the Benefis COPA.

Sincerely,



David C. Henry
President/CEO

DCH/mam

Attachment - Exhibit 1

bcc: John Goodnow

BLUE CROSS AND BLUE SHIELD OF MONTANA
(COMPANY ONLY)
DECEMBER 31, 1997 and 1996

NOTES TO THE FINANCIAL STATEMENTS
(Continued)

NOTE H - COMMITMENTS AND CONTINGENCIES (Continued)

At December 31, 1997 and 1996, the Company had remaining unpaid commitments of \$181,343 and \$1,528,913 on its construction contracts. The contracts were for remodeling of the buildings at 404 Fuller Avenue and 560 North Park Avenue in Helena.

As part of the Company's joint venture agreement with the Great Falls Clinic, LLC (GFC) to form MontanaCare, Inc., the Company is committed to pay the Great Falls Clinic, LLC a total of \$9,672,243 over fifteen years for a covenant not to sell. The agreement calls for annual payments of \$644,816 beginning January 1, 1997 and ending January 1, 2011. Because the Company believes that the covenant has economic substance the payments are considered to be for future performance. No liability is recorded and the payments will be charged to future operations as they become due.

In addition, BCBSMT agreed to pay GFC for attaining and maintaining certain performance goals. The payment amounts are as follows: \$1,000,000 on September 1, 1999, \$1,308,645 on November 1, 2002, and \$1,712,553 on November 1, 2005.

As part of the Company's joint venture agreement with Western Montana Clinic, P.C. to form Montana Health, LLC, the Company is committed to pay the Western Montana Clinic, P.C. a total of \$900,000 over 3 years for a physician retention covenant. The agreement calls for annual payments of \$300,000 commencing at closing and ending in 1999. The payments are considered to be for future performance, because the Company believes that the covenant has economic substance. No liability is recorded and the payments will be charged to future operations as they become due. (See Note I)

NOTE I - RELATED PARTY TRANSACTIONS AND DISCONTINUED OPERATIONS

In the normal course of business the Plan conducts various transactions with the companies held by its subsidiary, CBMI. The Plan's operating expenses include payments of \$3,743,820 and \$3,201,767 for 1997 and 1996 for VRI services. The Plan received a total of \$1,783,569 and \$1,186,994 for 1997 and 1996 in service fees, interest income and reimbursement of administration expenses.

Various long-term loans, accounts payable, and advances totaling \$1,768,631 and \$1,288,458 as of December 31, 1997 and 1996 have been made to the subsidiaries.

CBMI owes its proportionate share of federal income taxes to Blue Cross and Blue Shield of Montana. The current provision for taxes amounted to \$(13,462) and \$211,799 in 1997 and 1996, respectively.

The Company has advanced loans to employees for computer purchases. The accounts receivable balance as of December 31, 1997 was \$225,747.

NORTH CENTRAL MONTANA
PHYSICIANS IPA

TOGETHER, WE'RE HEALTHIER

December 5, 2006

Honorable Mike McGrath
Attorney General
Montana Department of Justice
P.O. Box 201401
Helena, MT 59620
VIA: FAX & US MAIL

Dear Mr. McGrath:

On behalf of the membership of the North Central Montana Physicians, LLP, we are requesting your office reevaluate your position on elimination of the COPA for Benefis Healthcare. North Central Montana Physicians, LLP is an 80 member physician group in Great Falls Montana, we comprise physicians who are not members of the Great Falls Clinic. While, we understand that the COPA was necessary in 1996 to ensure "fair play" to the Great Falls community, it no longer recognizes the competitive landscape in which all medical providers find themselves in Great Falls.

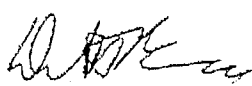
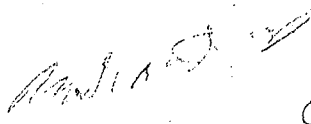
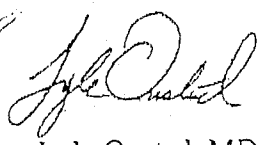
Currently a healthcare product, Blue Choice/Montana Care, which allows only a portion of our medical community to provide care to individuals, serves a large portion of Great Falls insured population. Patient choice of their physician is paramount to our delivery system and the current Blue Choice/Montana Care plan applies such heavy financial penalties to see a non-participating provider that the average person can no longer see the physician of their choice. The frustration of the excluded providers is immense as they have consistently requested inclusion in the product and been told, "No, there is no need for their service" by both Blue Cross Blue Shield and the Great Falls Clinic. Or worse, employees have been told that these providers have refused to participate in the Blue Choice/Montana Care product. In truth, Blue Cross Blue Shield of Montana and the Great Falls Clinic have intentionally excluded these providers from providing care to these community members. Because of the COPA the physician members of the North Central Montana Physicians, LLP have been marginalized in our efforts to partner with Benefis Healthcare and successfully bring new and innovative healthcare products to the Great Falls market.

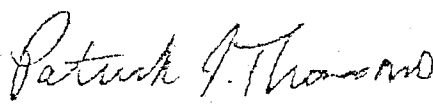
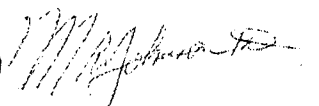
Yet, Blue Cross Blue Shield is allowed to continue to utilize their financial dominance to ensure the long term viability of a single medical organization in our community, the Great Falls Clinic and all its' subsidiary companies. Please evaluate the most recent healthcare bid activities of the Great Falls School District and you will understand the

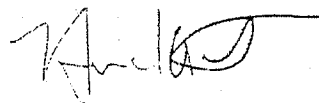
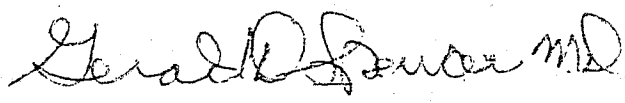
frustration both Benefis Healthcare and North Central Montana Physicians, LLP feel at our inability to fairly compete with Blue Cross Blue Shield and the Great Falls Clinic. The COPA is no longer being used to ensure 'fair play' for all parties but rather to ensure only one competitor, the Blue Cross/Great Falls Clinic joint venture, continues to gain market share and exclude over half the city's physician population from providing care. This ultimately will result in non Great Falls Clinic medical providers being financially forced to leave the community and continue the dominance of the Blue Cross products in the Great Falls marketplace for the foreseeable future.

We are petitioning you to reconsider your prior decision regarding eliminating the COPA. We feel that this action will allow the physician members of North Central Montana Physicians, LLP and Benefis Healthcare to partner together to provide health insurance products into the marketplace that do not exclude community providers, will ultimately help insure the long term viability of the entire medical community in Great Falls, and will lower the cost of medical insurance to our community.

Sincerely,

  
David Rohrer, MD Mark Miles, MD Lyle Onstad, MD

 
Patrick Thomas, MD Marcus Johnson, MD

 
Michael Lockett, MD Gerald Spencer, MD



Kelli D. Meuchel
Executive Officer

The Executive Committee of
North Central Montana Physicians, LLP

NORTH CENTRAL MONTANA PHYSICIANS IPA

TOGETHER WE'RE HEALTHIER

Membership of North Central Montana Physicians IPA, LLP

Alexander N Chung, MD
Antonio Santin, MD
Barbara Gutchenritter, MD
Bradley J Davis, MD
Brett A. Williams, MD
Brian L Abbott, MD
Bryan E Martin, MD
Chad M Engan, MD
Charles D Jennings, MD
Charles H Christensen, DO
Craig L Treptow, MD
Craig M Brayko, MD
Cristopher L Feucht, MD
Dale M Schaefer, MD
Dale R Mortenson, MD
Daniel K Gordon, MD
David B Baldrige, MD
David A Rohrer, MD
Dennis W Dietrich, MD
Donald Berdeaux, MD
Donald R Joyner, MD
Edwin A Cruz, MD
Eric J Anderson, MD
Eve M Gerasimou, MD
Frances B Herbert, MD
Gary L Schumacher, MD
Gerald D Spencer, MD
Grant W Harrer, MD
Greg S Tierney, MD
Hamid A Hai, MD
Holly C Strong, MD
J. Chris Burk, MD
J. William Bloemendaal, MD
James B Legan, MD
James E Mungas, MD
James G Clough, DPM
Jodi L Violett, MD
John C Hackethorn, MD
John G Van Gilder, MD
John B Becker, MD

John H Avery, MD
John J Perry, MD
Julie L Kuykendall, MD
K. Allan Ward, MD
Keith D Bortnem, DO
Kevin Mar, MD
Leslie A Russell, MD
Lyle J Onstad, MD
Marcus A Johnson, MD
Mark F Ozog, MD
Mark P Peterson, MD
Mark R Miles, MD
Mark W Reilly, MD
Melchisedek Margaris, MD
Michael A Dube, MD
Michael E Luckett, MD
Mike A Johnson, MD
Patrick E Galvas, DO
Patrick J Thomas, MD
Patsy M Vargo, MD
Paul L Gorsuch, MD
Richard D Blevins, MD
Robert M Grasseschi, MD
Rollin W Bearss, MD
Ronald G Ray, DPM
Ronald T Egan, MD
Sandra L Bailey, DO
Scott W Burk, MD
Susan H Avery, MD
Thomas C Key, MD
Thomas H. Matsko, MD
Timothy C Weill, MD
Timothy W Urell, DO
W. Lea Gorsuch, MD
William E Henning, MD

COPAing with antitrust rules

Just three systems have used certificates of public advantage seeking antitrust immunity. Experts now say they're regulatory dinosaurs



'The COPA has required additional state regulation and oversight, but that's required us to work more diligently to manage our costs and maintain prices at a reasonable level.'

—Joseph Damore,
president and chief
executive officer,
Mission Hospitals,
Asheville, N.C.

Robert Burgin remembers when he first became interested in a little-known law creating the certificate of public advantage—commonly known as a COPA—which offers merging hospitals a means of avoiding antitrust challenges from aggressive federal regulators in exchange for state supervision.

In August 1994, the former president and chief executive officer of Asheville, N.C.-based Memorial Mission Hospital received a 44-page fax from the U.S. Justice Department's Antitrust Division demanding thousands of pages of documents about a proposed joint venture with smaller city rival and eventual merger partner, St. Joseph's Hospital.

"Our fax machine began humming with the Justice Department's civil investigative demand letter, and that froze everything in place. Talk about something that will tighten your sphincter!" Burgin says with a chuckle. "We responded to everything they asked for, hired a team of lawyers and assistants and rented two extra copy machines to pack a panel truck with thousands of documents to ship to Washington."

He says that in 1995 the Justice Department required 16 executives from the two hospitals to be deposed in Washington by government lawyers. "At our expense, of course," he recalls. "And we spent two full days answering questions they pulled from our file documents."

At the same time executives from both hospitals met with state legislators to explain why they sought the joint venture and why it was necessary to expand an existing state COPA law, which conferred what is called a state action immunity on the merger, a court-recognized exemption from federal antitrust oversight. The law passed and in 1995, Mission Hospitals became the first health system in the country to use a COPA to protect a state-blessed monopoly. Generally state COPA laws try to protect consumers from potentially anticompetitive behavior of the merging partners by returning to the com-

munities some of the savings they received from joining.

As a spate of mergers began transforming the hospital industry in the early 1990s, at least 19 states passed laws allowing merging hospitals to escape federal antitrust scrutiny if they submitted to state supervision. More than 200 hospitals announced mergers in 1995, up from about 50 only five years earlier. COPA laws were then viewed as a remedy for costly investigations and even riskier merger challenges from the two increasingly aggressive federal antitrust agencies: the Federal Trade Commission and the Justice Department's Antitrust Division. In fact, an exclusive *Modern Healthcare* Web poll found that more than two-thirds of respondents say federal and state antitrust enforcement has hindered business decisions at their healthcare organizations (See results, p. 32).

However, 10 years after that first COPA was awarded, only two other merging health systems have pursued the arrangement and continue to operate under state oversight: Two-hospital Benefis Healthcare in Great Falls, Mont., and three-hospital Palmetto Health Alliance in Columbia, S.C. Those organizations, along with Mission, are required to file annual reports with state agencies and submit to government scrutiny of their finances and compliance with their agreements. Benefis and Mission are the only nonfederal acute-care hospitals in their respective cities, while 1,005-bed Palmetto faces competition from the Sisters of Charity Providence Hospitals in South Carolina's state capital.

Why haven't more hospitals sought COPAs, and how did they turn into something of a fad—what one healthcare lawyer dubbed the pet rocks of the 1990s? What happened to the three systems that did receive them? And are COPAs ever likely to be revived?

Facing extinction?

Healthcare lawyers and policy experts generally dismiss COPAs as failed models, regulatory dinosaurs from a bygone era unlikely to be resurrected in the current

antitrust enforcement environment. And while the health system executives living under them say they probably wouldn't seek them again in today's changed climate because they seem like an unnecessary risk, most say they have few regrets.

After rocky starts, a few financial potholes and requested modifications of the agreements, all of the COPA-backed mergers are profitable today.

Michael Bissegger, a former FTC lawyer now with the Washington office of Epstein, Becker & Green, who worked on the Columbia COPA, says a second request for Hart-Scott-Rodino Act filing information from the federal antitrust regulators can be a costly and stressful headache, averaging from \$750,000 to \$1.5 million per request. The Hart-Scott-Rodino Act requires parties in large transactions to file pre-merger notification reports with federal antitrust agencies and wait a prescribed time before closing the deal.

Bissegger says that while COPAs offer a defense against a potential federal antitrust challenge, they don't offer immunity from investigation or prosecution. He says merging hospitals must still file under Hart-Scott-Rodino because it's a regulatory requirement, but the federal government is unlikely to challenge a merger blessed by a COPA.

At first hospitals thought that the COPA

statutes offered protection against federal challenges with minimal state oversight. But then a 1992 U.S. Supreme Court decision set a legal precedent requiring strong and ongoing state supervision of the programs. "The hospitals quickly realized this was not a way to achieve their merging goals," says James Blumstein, a professor at Vanderbilt University Law School who has studied COPAs. "Particularly if the price was losing their autonomy. That case made the price of COPAs more unattractive and less of a magic bullet. As long as a COPA appeared to be a sham, it was something to look at. But once it had some teeth, it became more unappealing."



Burgin: Regulatory climate has changed since COPA was signed.

The three COPA agreements occurred after the Supreme Court case, though some other state

COPA statutes preceded that ruling.

In hindsight, COPAs may seem like a bad idea to healthcare lawyers, policy experts and even some hospital executives. But the three systems that signed them continue to abide by their terms nearly a decade later.

Despite the challenges of having the government looking over their shoulders, some of those hospital executives actually praised their COPA agreements, saying individually that the hospitals would have been unable to afford to pay for the community health programs, technology purchases and new services the mergers allowed them to achieve.

While they complained about some of the onerous constraints the agreements impose on their finances, they say the COPAs imposed discipline that has served their organizations and communities well. But their decisions were based on healthcare antitrust enforcement conditions of a decade ago. They say they'd have to seriously reconsider signing a COPA today as federal regulators have been less aggressive.

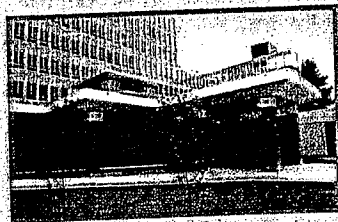
There was generally little local opposition to the COPAs. Two of the three Blues plans in the markets where the COPAs were used—the largest payers in those markets—declined comment, and local employers seemed to support the mergers as a way to prevent hospital arms races that could ultimately raise their costs.

Asheville, N.C.

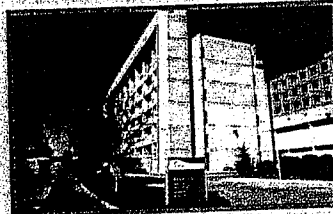
Joseph Damore, current president and CEO of 721-bed Mission, says the merger was right for the Asheville community and has served the hospitals well. Damore, who inherited the COPA when he replaced retiring CEO Burgin in December 2004, says the community benefits far outweighed the costs of eliminating competition. Mission serves Asheville, a city of 70,000 in far western North Carolina and a market of 225,000 residents of surrounding counties.

"The community has received millions of dollars in healthcare benefits and our costs are significantly lower than similar-size hospitals in our state," he says. "We are probably the

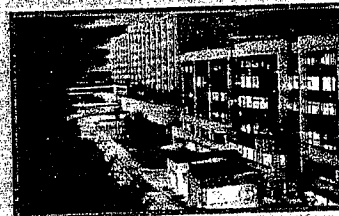
HOW THE COPAs COMPARE



Benefis Healthcare,
Great Falls, Mont.



Mission Hospitals,
Asheville, N.C.



Palmetto Health Alliance,
Columbia, S.C.

System

Projected savings

\$109.2 million over 10 years;
reduced to \$69.7 million

\$74.2 million over five years

\$71 million over five years

Achieved savings

Yes; amount unavailable

\$88 million over five years

Yes; amount unavailable

Other terms

Revenue cap; limit profit
margin to 6%

Benchmark prices to
comparable hospitals in state

Five-year price freeze

Charity care

No less than 1996 levels

Commit to maintaining higher
charity-care levels

Means testing to qualify
for free care

Sources: Company reports, Modern Healthcare research

Special Report

most regulated hospital in North Carolina and maybe even in the country. The COPA has required additional state regulation and oversight, but that's required us to work more diligently to manage our costs and maintain prices at a reasonable level."

Damore says Mission achieved \$88 million in savings in the first five years of operation, exceeding the COPA expectation by more than 14%, and has recorded more than \$100 million in savings since the COPA was announced. The monopoly has been profitable almost since its inception. In 1999, the year after it formally merged with St. Joseph's, it earned \$22.6 million on revenue of \$384 million. Last year, Mission earned an operating profit of \$24.7 million on revenue of \$565 million, a 4.3% margin. The system posted net income of \$25.9 million that year.

Burgin, who negotiated the COPA and the 1998 purchase of St. Joseph's for \$75 million, says there is support for and comfort with the agreement and the state regulators monitoring it.

He says the state negotiated the number of doctors serving on the hospitals' board and insisted on limited insider representation on the board. "There were some tense moments the first few years, particularly with the doctors. They were pretty anxious. They've always been able to play us off against each other and now they can't. They thought we'd take advantage. We never did, but that fear was there."

Burgin says the aggressive enforcement by the federal antitrust agencies during the wave of hospital merger mania in the '90s made the COPA protection more desirable. But he says the environment began to change after the 1994 elections that led to big Republican gains in Congress. "Would I do it over again? After the 1994 elections the House and Senate became more entrepreneurial and tolerant of mergers. But it was a different time when we were getting started and we felt fortunate to secure this COPA," he says.

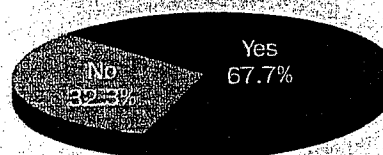
Columbia, S.C.

Kester Freeman Jr., who joined Richland Memorial Hospital in 1983 as executive vice president and was named president and CEO of the public hospital nine years later, says at the time Richland was considering a merger with crosstown rival, two-hospital Baptist Healthcare System, there was a climate of anticipated aggressive managed care in the market, coupled with the intrusion of for-profit Columbia/HCA. Freeman, who was elected CEO of the merged 1,084-bed Palmetto Health in 1998, says the system was formed from an initial conversation about the hospitals' commitment to community-based, not-for-profit healthcare.

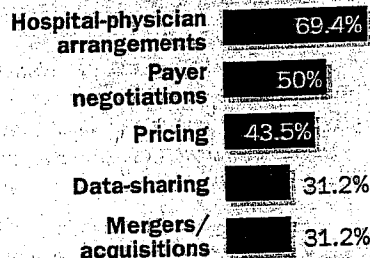
ANTITRUST DISGUST

More than two-thirds of the respondents to *Modern Healthcare's* exclusive Web survey on antitrust issues say regulatory oversight efforts have restricted the business decision-making at their healthcare organizations—most notably in hospital-physician relations.

Have state/federal antitrust enforcement activities inhibited business decisions at your healthcare organization?

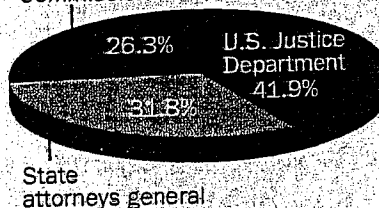


Which of the following business activities at your healthcare organization do you believe are most affected by antitrust concerns (Choose all that apply)



Which oversight agency do you believe is the most aggressive in enforcing antitrust statutes?

U.S. Federal Trade Commission



Note: The nonscientific survey was conducted Jan. 10 to Feb. 11 via modernhealthcare.com, with 186 readers completing the survey.
Source: Modern Healthcare MH/Adam Dol

He says raising prices didn't motivate the merging hospitals. The two or three years before the merger were the most profitable in the respective hospitals' histories, he adds.

In hindsight, Freeman says Palmetto Health may not have needed the COPA. "From a personal perspective I have no regrets. We were not intimidated by the obligations of our COPA, though we thought it would shelter us from fed-

eral interest. We didn't plan the merger to beat up competitors and payers but to better serve the community." Palmetto Health controlled 67% of the acute-bed hospital market at the time of the merger.

Freeman says employers and payers were generally quiet about the merger and the May 1997 COPA, but three local residents sued Palmetto Health two months later, alleging in a case that went to the state's Supreme Court that county residents would not benefit from the merger involving its only public hospital. The court's ruling affirmed both the COPA law and a public hospital's right to lease itself to a tax-exempt organization.

He says the COPA has allowed Palmetto Health "to absolutely look at anybody in this community to say we've lived up to our obligation and met every COPA commitment, come hell or high water. That's why we did this: We didn't want to be viewed as an investor-owned, bottom-line driven organization that doesn't care about commitments to the community. Even though it's been a financial burden to us, I'm pretty proud of meeting those 25 obligations."

Palmetto Health earned an operating profit and net income of \$25 million on total net revenue of \$880 million for fiscal 2004 ended Sept. 30, an operating margin of 3%, company CFO Paul Duane says. He says total revenue was lower than in 2003, but net income and operating profits were around \$27 million that year. Palmetto's hospitals were profitable before the 1998 merger, nearing \$8 million in net income on total revenue of \$403 million, but in 1999 it lost \$23 million on total revenue of \$645.3 million.

Leon Frishman, deputy commissioner of the South Carolina Department of Health and Environmental Control, says there wasn't a fear that Palmetto Health would exploit its market power to gouge customers. "There were substantial benefits to the community and some conditions they had to follow," he says. "And they did all those things."

Great Falls, Mont.

Benefis formed in 1996 with the merger of 339-bed Montana Deaconess Medical Center and 145-bed Columbus Hospital after a 20-month battle with state and federal regulators.

Wayne Dunn, Benefis' vice president of finance and chief financial officer, says the two hospitals had never previously discussed a merger before the COPA agreement. "We hit it the first time out," says Dunn, who joined Deaconess as CFO in 1981 and was named Benefis CFO in 1996 when the hospitals merged.

Dunn says 490-bed Benefis didn't want to

Continued on p. 34

Special Report

COPA >> from p. 32

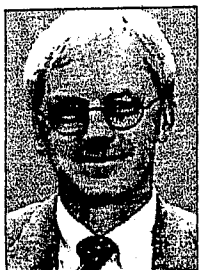
incur the time, effort and costs associated with a federal merger challenge. He says state hospital associations around the country developed the COPA model with state legislatures as a way to pre-empt federal merger challenges for hospitals that wanted that option.

"And we had bonds outstanding and needed to give assurance to the bond people. But with the FTC hovering like that, we couldn't give any assurances," he says. "So we thought the best approach would be to go to our attorney general and discuss COPA, rather than merging and having to go through the agony of undoing it."

Even a monopoly offers no guarantee of a profit. In 1997, the first full year of its merger, Benefis logged an operating profit of \$7 million on revenue of \$140 million, but saw those gains erode as it projected a combined \$9 million loss in 1998 and 1999 because of what it called constrictive pricing and revenue caps. However with requested modifications Benefis

was able to post a \$3.9 million operating profit in 1998 on total revenue of \$158 million and a \$1.6 million operating profit in 1999 on revenue of \$160 million.

Dunn says the COPA forbade Benefis from cutting services without state permission, required the organization to merge medical staffs and put a ceiling on revenue to prevent the system from "exploiting our monopolistic position." The revenue cap was achieved by a formula determined by patient volume and case-mix index and allowed an annual inflation increase.



Dunn has mixed feelings over the value of his system's COPA.

But would Benefis do it again? "I am more convinced today than even when we first did it that the merger was a good thing, the correct thing to do," Dunn says. "About the COPA I have mixed feelings. It allowed us to get the merger accomplished. But it really takes a lot of time and energy and some costs. I would do it again if it was the only way to achieve the merger."

Like Palmetto Health, Benefis sought modifications in the COPA when the conditions

the agreement imposed threatened the hospital's financial health.

In 1996, Benefis hospitals provided \$27.1 million in charity care, which has increased to \$79.7 million in 2004. Dunn says Benefis' unaudited financial statement for calendar 2004 shows a steep increase in revenue and profits over 2003. Total revenue grew about 12% to \$269.7 million from \$241.1 million in 2003 while operating income grew 49% to \$9.8 million in 2004 from \$6.6 million in 2003, for an operating margin of 5.3% in 2004.

Montana Assistant Attorney General Kelly O'Sullivan, who inherited the task of monitoring the COPA in 2001 five years after it was signed, says: "You have to balance the needs of Montana consumers of healthcare without driving the hospitals out of business." While she says the process has been contentious sometimes, "My sense is that our financial regulation has been very successful for consumers and patients in Great Falls." <<

What do you think?

Write us with your comments. Via e-mail, it's mhletters@crain.com; by fax, 312-280-3183.

ARNOLD & PORTER LLP

We are pleased to announce that

Dara Corrigan

has joined the firm as co-head of our US Pharmaceutical and Medical Devices practice group. She is resident in our Washington, DC office.

Dara_Corrigan@aporter.com
202.942.5508

Washington, DC

New York

London

Brussels

Los Angeles

Northern Virginia

Denver

www.aporter.com

Why Summit works.

- cost effective solutions • precise management
- highly tailored, customized programs
- our services are our sole business



Summit Services

What we do.

We take care of all the none-acute areas, housekeeping, maintenance, laundry and dining services. We free you up so that the care you provide is your very best. Our increased buying power improves your bottom line ensuring savings at every corner.

Partner with us, we're with you everyday.

1.800.845.7296 • www.summitservices.com